

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**TONYA KAY MCCARTER**  
**a.k.a. TONYA KAY WHITFIELD**  
**2110 Crystal Cove Way**  
**San Marcos, CA 92069**

**Registered Nurse License No. 516131**

Respondent

Case No. 2012-165

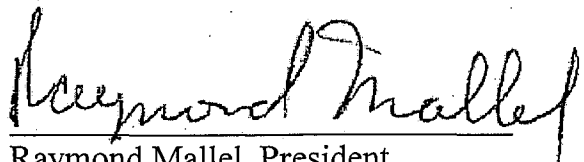
OAH No. 2011100206

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **August 23, 2012.**

IT IS SO ORDERED **August 23, 2012.**



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2095  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **TONYA KAY MCCARTER,**  
13 **AKA TONYA KAY WHITFIELD**  
14 **2110 Crystal Cove Way**  
**San Marcos, CA 92069**

15 **Registered Nurse License No. 516131**

16 Respondent.

Case No. 2012-165

OAH No. 2011100206

**STIPULATED SURRENDER OF**  
**LICENSE AND ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
19 proceeding that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
22 Registered Nursing (Board). She brought this action solely in her official capacity and is  
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
24 Antoinette B. Cincotta, Deputy Attorney General.

25 2. Tonya Kay McCarter, aka Tonya Kay Whitfield (Respondent) is representing herself  
26 in this proceeding and has chosen not to exercise her right to be represented by counsel.

27 3. On or about September 22, 1995, the Board issued Registered Nurse License No.  
28 516131 to Tonya Kay McCarter, aka Tonya Kay Whitfield (Respondent). The Registered Nurse

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.  
2 2012-165 and will expire on February 28, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-165 was filed before the Board, and is currently pending against  
5 Respondent. The Accusation and all other statutorily required documents were properly served  
6 on Respondent on September 20, 2011. Respondent timely filed her Notice of Defense contesting  
7 the Accusation. A copy of Accusation No. 2012-165 is attached as Exhibit A and incorporated by  
8 reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 2012-165. Respondent also has carefully read, and understands the effects of this  
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the right to a  
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at  
15 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
17 compel the attendance of witnesses and the production of documents; the right to reconsideration  
18 and court review of an adverse decision; and all other rights accorded by the California  
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
21 every right set forth above.

22 CULPABILITY

23 8. Respondent understands that the charges and allegations in Accusation No. 2012-165,  
24 if proven at a hearing, constitute cause for imposing discipline upon her Registered Nurse  
25 License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of  
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
28 basis for the charges in the Accusation and that those charges constitute cause for discipline.

1 Respondent hereby gives up her right to contest that cause for discipline exists based on those  
2 charges.

3 10. Respondent understands that by signing this stipulation she enables the Board to issue  
4 an order accepting the surrender of her Registered Nurse License without further process.

5 CONTINGENCY

6 11. This stipulation shall be subject to approval by the Board of Registered Nursing.  
7 Respondent understands and agrees that counsel for Complainant and the staff of the Board of  
8 Registered Nursing may communicate directly with the Board regarding this stipulation and  
9 surrender, without notice to or participation by Respondent. By signing the stipulation,  
10 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind  
11 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt  
12 this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be  
13 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
14 between the parties, and the Board shall not be disqualified from further action by having  
15 considered this matter.

16 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of  
17 License and Order, including facsimile signatures thereto, shall have the same force and effect as  
18 the originals.

19 13. This Stipulated Surrender of License and Order is intended by the parties to be an  
20 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
21 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
22 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order  
23 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
24 executed by an authorized representative of each of the parties.

25 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
26 the Board may, without further notice or formal proceeding, issue and enter the following Order:

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

1. The surrender of Respondent's Registered Nurse License, and the acceptance of the surrendered license by the Board, shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

5. If and when Respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,107.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 2012-165 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

0/11/12

TONYA KAY MCCARTER,  
AKA TONYA KAY WHITFIELD  
*Respondent*

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

6/12/2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

ANTOINETTE B. GINCOTTA  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. 2012-165**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2095  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

*2012-165*

13 **TONYA KAY MCCARTER,**  
14 **AKA TONYA KAY WHITFIELD**  
2110 Crystal Cove Way  
15 San Marcos, CA 92069

**A C C U S A T I O N**

16 **Registered Nurse License No. 516131**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing (Board),  
22 Department of Consumer Affairs.

23 2. On or about September 22, 1995, the Board of Registered Nursing issued Registered  
24 Nurse License Number 516131 to Tonya Kay McCarter, also known as Tonya Kay Whitfield  
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on February 28, 2013, unless renewed.

27 ///

28 ///



## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

....

///

///

1           8.       Section 2770.7 of the Code states:

2           (a) The board shall establish criteria for the acceptance, denial, or termination  
3 of registered nurses in the diversion program. Only those registered nurses who have  
4 voluntarily requested to participate in the diversion program shall participate in the  
5 program.

6           (b) A registered nurse under current investigation by the board may request  
7 entry into the diversion program by contacting the board. Prior to authorizing a  
8 registered nurse to enter into the diversion program, the board may require the  
9 registered nurse under current investigation for any violations of this chapter or any  
10 other provision of this code to execute a statement of understanding that states that  
11 the registered nurse understands that his or her violations that would otherwise be the  
12 basis for discipline may still be investigated and may be the subject of disciplinary  
13 action.

14           (c) If the reasons for a current investigation of a registered nurse are based  
15 primarily on the self-administration of any controlled substance or dangerous drug or  
16 alcohol under Section 2762, or the illegal possession, prescription, or nonviolent  
17 procurement of any controlled substance or dangerous drug for self-administration  
18 that does not involve actual, direct harm to the public, the board shall close the  
19 investigation without further action if the registered nurse is accepted into the board's  
20 diversion program and successfully completes the requirements of the program. If  
21 the registered nurse withdraws or is terminated from the program by a diversion  
22 evaluation committee, and the termination is approved by the program manager, the  
23 investigation shall be reopened and disciplinary action imposed, if warranted, as  
24 determined by the board.

25           (d) Neither acceptance nor participation in the diversion program shall preclude  
26 the board from investigating or continuing to investigate, or taking disciplinary action  
27 or continuing to take disciplinary action against, any registered nurse for any  
28 unprofessional conduct committed before, during, or after participation in the  
diversion program.

          (e) All registered nurses shall sign an agreement of understanding that the  
withdrawal or termination from the diversion program at a time when the program  
manager or diversion evaluation committee determines the licensee presents a threat  
to the public's health and safety shall result in the utilization by the board of diversion  
treatment records in disciplinary or criminal proceedings.

          (f) Any registered nurse terminated from the diversion program for failure to  
comply with program requirements is subject to disciplinary action by the board for  
acts committed before, during, and after participation in the diversion program. A  
registered nurse who has been under investigation by the board and has been  
terminated from the diversion program by a diversion evaluation committee shall be  
reported by the diversion evaluation committee to the board.

9.       Section 2770.11 of the Code states:

          (a) Each registered nurse who requests participation in a diversion program  
shall agree to cooperate with the rehabilitation program designed by the committee  
and approved by the program manager. Any failure to comply with the provisions of  
rehabilitation program may result in termination of the registered nurse's participation  
in a program. The name and license number of a registered nurse who is terminated

1 for any reason, other than successful completion, shall be reported to the board's  
2 enforcement program.

3 (b) If the program manager determines that a registered nurse, who is denied  
4 admission into the program or terminated from the program, presents a threat to the  
5 public or his or her own health and safety, the program manager shall report the name  
6 and license number, along with a copy of all diversion records for that registered  
7 nurse, to the board's enforcement program. The board may use any of the records it  
8 receives under this subdivision in any disciplinary proceeding.

### 9 **COST RECOVERY**

10 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
11 administrative law judge to direct a licentiate found to have committed a violation or violations of  
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
13 enforcement of the case.

### 14 **DRUGS**

15 11. Dilaudid, sold generically as hydromorphone, is a Schedule II controlled substance as  
16 designated by Health and Safety Code Section 11055, subdivision (b)(1)(K) and is a dangerous  
17 drug pursuant to Business and Professions Code section 4022. Dilaudid is a narcotic analgesic  
18 prescribed for the relief of moderate to severe pain.

19 12. Vicodin, a brand name for acetaminophen and hydrocodone, is a Schedule III  
20 controlled substance as designated by Health and Safety Code Section 11056, subdivision (e)(4),  
21 and is a dangerous drug pursuant to Business and Professions Code section 4022.

22 13. Soma, sold generically as carisoprodol, is a Schedule IV controlled substance under  
23 Health and Safety Code section 11057, subdivision (d)(17), and is a dangerous drug pursuant to  
24 Business and Professions Code section 4022. Carisoprodol is metabolized in the liver by  
25 CYP2C19 to form meprobamate.

### 26 **FACTUAL ALLEGATIONS**

27 14. Respondent self-referred to the Board's Nursing Diversion Program administered by  
28 Maximus (the Program) on or about December 30, 2010, after her former employer confronted  
her about stealing Diluadid from the hospital where she worked, which Respondent admitted  
doing. Respondent resigned her employment in lieu of disciplinary action. Respondent enrolled  
with the Program on January 6, 2011, and she was immediately suspended from nursing.

1           15. On January 18, 2011, Respondent completed an intake assessment and received a  
2 DSM/AXIS I diagnosis of opioid and alcohol dependence. Respondent signed a Preliminary  
3 Agreement, effective January 6, 2011, which contained specific criteria that must be met in order  
4 for Respondent to successfully complete the Program. Among other requirements, Respondent  
5 was to submit to the random collection of body fluid samples for analysis, and abstain from the  
6 use of over-the-counter drugs, alcohol, or mind altering drugs except as prescribed by a licensed  
7 healthcare provider and approved by Maximus. Respondent was given specific instructions  
8 regarding the collection of urine specimens, and that the levels of her creatinine and specific  
9 gravity must be within acceptable ranges in order to allow the effective monitoring of  
10 Respondent's drug and alcohol usage. Any new or currently prescribed medications required that  
11 the scripts be provided to Maximus within 24 hours of the prescription being written. Respondent  
12 was warned that any issues of non-compliance with the Program would be reported to the Board,  
13 which could then result in disciplinary action against her license.

14           16. In a random body fluid test conducted on February 1, 2011, Respondent was non-  
15 compliant in that her test results indicated that her creatinine levels were below the acceptable  
16 range. Respondent was admonished in a letter dated February 4, 2011, to follow the contract's  
17 guidelines.

18           17. In a telephone conversation with her case manager on February 15, 2011, Respondent  
19 advised her case manager that she would be undergoing oral surgery. Respondent was told that  
20 she would need to complete a pain management plan with her dentist if her oral surgery included  
21 opiate pain medications.

22           18. In a telephone conversation with her case manager on March 23, 2011, Respondent  
23 stated that her dentist prescribed her four tablets of Valium (for pre-surgery), and Vicodin for  
24 post-oral surgery pain. Respondent was directed to provide her case manager with a detailed  
25 relapse prevention plan as well as documentation from her dentist regarding the start date and  
26 stop date of using Vicodin. The oral surgery was scheduled for March 30, 2011.

27 ///

28 ///

1        19. In a random body fluid test conducted on March 28, 2011, Respondent was non-  
2 compliant in that her test result was out of range. Respondent was admonished in a letter dated  
3 March 30, 2011, to follow the contract's guidelines.

4        20. On or about March 30, 2011, Maximus mailed to Respondent the "Diversion Program  
5 Recovery Terms and Conditions Agreement Effective Date March 17, 2011." Respondent was  
6 directed to sign and return the contract within 10 days of the mailing date. Respondent failed to  
7 return the contract.

8        21. In a telephone conversation with her case manager on April 1, 2011, Respondent  
9 reported that she took Valium before and during her oral surgery. Respondent stated that she took  
10 her last Vicodin tablet the previous day, March 31, 2011. She was also prescribed an oral mouth  
11 rinse containing alcohol.

12        22. In a random body fluid test conducted on April 6, 2011, Respondent tested positive  
13 for hydrocodone and benzodiazepines, as expected.

14        23. In a telephone conversation with her case manager on April 11, 2011, Respondent  
15 reported that she was still taking Vicodin for pain due to a post-op infection. Her case manager  
16 advised Respondent that she needed to taper off the Vicodin and use Motrin instead.

17        24. In a telephone conversation with her case manager on April 12, 2011, Respondent  
18 reported that she refilled her prescription for Vicodin for an additional 24 tablets (11 days after  
19 she reported her last tablet of Vicodin was taken on March 31, 2011) because of ongoing mouth  
20 pain. Respondent was reminded again to return her relapse prevention plan.

21        25. In a random body fluid test conducted on April 12, 2011, Respondent tested positive  
22 for hydrocodone, as expected. Respondent also tested positive for meprobamate, a metabolite of  
23 Soma, a medication not on Respondent's list of approved medications.

24        26. In a telephone conversation with her case manager on April 18, 2011, Respondent  
25 was notified of her positive drug screen for hydrocodone and meprobamate/Soma. Respondent  
26 denied using Soma, but stated that a nurse friend gave her an Advil. Respondent then told her  
27 case manager that she had a pinched nerve in her back that might need further attention and

28        ///

1 possible opiate pain relief. Respondent was advised that her sobriety date was reset and that any  
2 further positive drug screens would mandate a 30-day inpatient treatment program.

3 27. In a telephone conversation with her case manager on April 22, 2011, Respondent  
4 was told that if she quits the Program, she would be reported to the Board of Registered Nursing  
5 and her case would be closed as public safety risk. Respondent agreed to stay in the Program.  
6 Respondent told her case manager that she learned her nurse friend gave her a tablet of Soma  
7 instead of Advil. Respondent reported that she took her last tablet of Vicodin on April 21, 2011.  
8 Respondent then informed her case manager that she was having severe back issues. Her case  
9 manager advised that if Respondent's medical problems required that she take unapproved  
10 medications, Respondent's case would be closed until her health problems were resolved.

11 28. In a telephone call to her case manager on April 23, 2011, Respondent reported that  
12 she saw her orthopedist on April 22, 2011, and was prescribed Vicodin for her neck. Respondent  
13 was due to conduct a drug screen that day and she was concerned. Respondent was directed to  
14 submit medical documentation from her doctor and a copy of the Vicodin prescription as soon as  
15 possible. Respondent suggested that she might be better served by closing her case for medical  
16 reasons because she would not be able to provide negative tests due to her pain issues.

17 29. In a random body fluid test conducted on April 23, 2011, Respondent tested positive  
18 for hydrocodone, as expected. Respondent again tested positive for meprobamate/Soma. The  
19 half-life of Soma is indicated to be 10 hours.

20 30. In a telephone call with her case manager on April 25, 2011, Respondent admitted  
21 that she failed to immediately contact the Program when she was given a new prescription for 40  
22 more tablets of Vicodin by the orthopedist, and that she waited until she had to provide a urine  
23 sample for testing before notifying her case manager. Respondent was told that because she was  
24 taking Vicodin for three weeks following oral surgery, then went to another doctor and got a new  
25 prescription for Vicodin after the previous prescription expired, she was exhibiting relapse  
26 behavior and that her case would not be closed for medical reasons. Respondent was told that she  
27 could not continue her medication-seeking behavior and that she needed to find alternate  
28 therapeutic ways to manage her back pain. Respondent was again warned that she could be

1 mandated for inpatient treatment or terminated from the Program as a public safety risk if her  
2 behavior continued. Respondent agreed to go back to her doctor and seek alternative pain  
3 management.

4 31. On April 29, 2011, after learning of the positive screen for Soma, Respondent's case  
5 manager notified the Diversion Evaluation Committee (DEC) and Respondent's Nurse Support  
6 Group (NSG) facilitator and it was agreed that Respondent would be required to attend a 30-day  
7 inpatient treatment program. The case manager left a message with Respondent regarding her  
8 new mandated treatment plan.

9 32. On April 29, 2011, Respondent contacted her case manager and admitted that she  
10 obtained a prescription for Soma at the same time her orthopedist gave her the prescription for  
11 Vicodin (on April 22, 2011). Respondent argued that she has severe neck pain and that she needs  
12 medical intervention. Respondent said that she could not go to treatment because she had a  
13 vacation planned. Respondent was told that she had seven days to decide whether to enter a  
14 residential program or her case would be closed.

15 33. On May 2, 2011, Respondent called her case manager to report that she would be  
16 going to a "skanky" inpatient program at Spencer Recovery Center in Laguna Beach. Respondent  
17 reported that she relapsed all weekend on alcohol and Xanax because of the whole situation.  
18 Respondent was directed to place the case manager's name on her consent forms when she checks  
19 into the recovery center on May 6, 2011, so that her attendance could be verified.

20 34. On May 3, 2011, Respondent reported to her case manager that she just found out she  
21 has three herniated discs and that she had been referred to a neurologist. The case manager told  
22 Respondent that she still needed to deal with her addiction issues, but Respondent was adamant  
23 that she had not relapsed. Respondent was reminded about her out-of-range test results, her lies  
24 concerning her Vicodin use and the prescription for Soma, her use of alcohol and Xanax over the  
25 weekend to alleviate stress, and that she missed a test because she knew it would be "dirty."  
26 Respondent was told that opiate pain relief is not an option for long-term treatment, especially for  
27 an addict. Respondent was advised that should she elect surgery, she should still attend a

28 ///

1 treatment program to develop coping skills so that she does not go into a full-blown relapse when  
2 she has to take pain medications again.

3 35. In a telephone call to her case manager on May 4, 2011, Respondent stated that she  
4 could not go to substance abuse treatment because she has spinal compression and that she had  
5 too many medical problems. ("I may not be able to walk in my lifetime.")

6 36. Following the telephone conversation with Respondent, her case manager contacted  
7 Respondent's NSG facilitator and the Board of Registered Nursing to inform them that  
8 Respondent's case was going to be closed as a failure to derive benefit from the Program. Based  
9 on the Board's recommendation, on May 4, 2011, the DEC members voted in agreement to  
10 terminate Respondent as a public safety risk due to her relapse behavior, her failure at sobriety,  
11 and her poor recovery skills.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Termination from the Nursing**

14 **Diversion Program as a Public Safety Risk)**

15 37. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
16 Code in that Respondent failed to comply with the Board's Nursing Diversion Program, as she  
17 agreed to do in her contract. As a result, on or about May 5, 2011, Respondent was formally  
18 terminated from the Program as a public safety risk, under section 2770.11 of the Code, because  
19 she presents a threat to the public and/or her own health and safety, as detailed in paragraphs 14-  
20 36, above.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Dangerous Use of Controlled Substances)**

23 38. Respondent is subject to disciplinary action under section 2762, subdivision (a) of the  
24 Code in that Respondent's use of controlled substances and alcoholic beverages are in a manner  
25 dangerous or injurious to herself, any other person, and the public, and such use has impaired  
26 Respondent's ability to conduct with safety to the public the practice authorized by her nursing  
27 license, as detailed in paragraphs 14-36, above.

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8

## 9

0  
1

- 2  
3  
4  
5  
6  
7

8

9  
20  
21

3